

Message

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**From:** Dawson, Jeffrey [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B7281288675C408D9667266072F0AE21-JEFFREY DAWSON]  
**Sent:** 6/3/2021 3:58:04 PM  
**To:** Messina, Edward [Messina.Edward@epa.gov]  
**Subject:** RE: Wendy's, States ditch food wrappers with "forever chemicals"

Thx Ed

Jeffrey L Dawson  
Senior Science Advisor  
Immediate Office  
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**From:** Messina, Edward <Messina.Edward@epa.gov>  
**Sent:** Thursday, June 03, 2021 11:56 AM  
**To:** Nesci, Kimberly <Nesci.Kimberly@epa.gov>; Dawson, Jeffrey <Dawson.Jeff@epa.gov>; Goodis, Michael <Goodis.Michael@epa.gov>; Nguyen, Thuy <Nguyen.Thuy@epa.gov>  
**Subject:** FW: Wendy's, States ditch food wrappers with "forever chemicals"

fyi

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Ed Messina, Esq.  
Acting Office Director  
Office of Pesticide Programs  
Office of Chemical Safety & Pollution Prevention  
U.S. Environmental Protection Agency  
Washington, D.C.  
p: (703) 347-0209

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**From:** Weiler, Gregory <weiler.gregory@epa.gov>  
**Sent:** Thursday, June 3, 2021 8:05 AM  
**To:** Messina, Edward <Messina.Edward@epa.gov>; Rush, Randall <Rush.Randall@epa.gov>; Ayres, Sara <Ayres.Sara@epa.gov>; Angle, Stephen <Angle.Stephen@epa.gov>; Broadnax, Sheila <Broadnax.Sheila@epa.gov>; Dunbar, Kristin <Dunbar.Kristin@epa.gov>; Nystrom, Eric <nystrom.eric@epa.gov>; Garcia, Diego <Garcia.Diego01@epa.gov>; Luschek, Robert <Luschek.Robert@epa.gov>; Moline, Sierra <Moline.Sierra@epa.gov>; Khan, Sidrah <khan.sidrah@epa.gov>; RonDsmith1349@outlook.com  
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**Subject:** Wendy's, States ditch food wrappers with "forever chemicals"

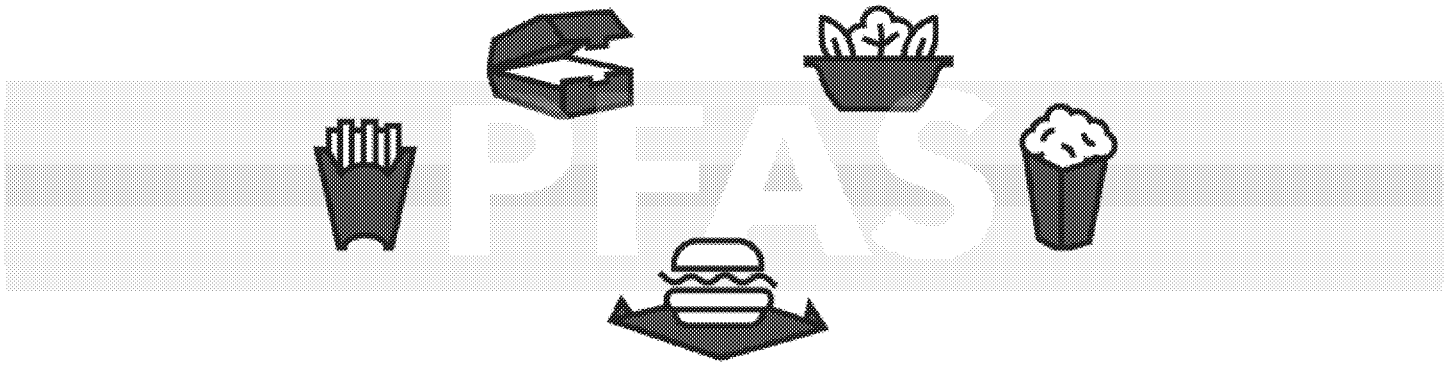


Illustration: Jonathan Hurtarte/Bloomberg Law

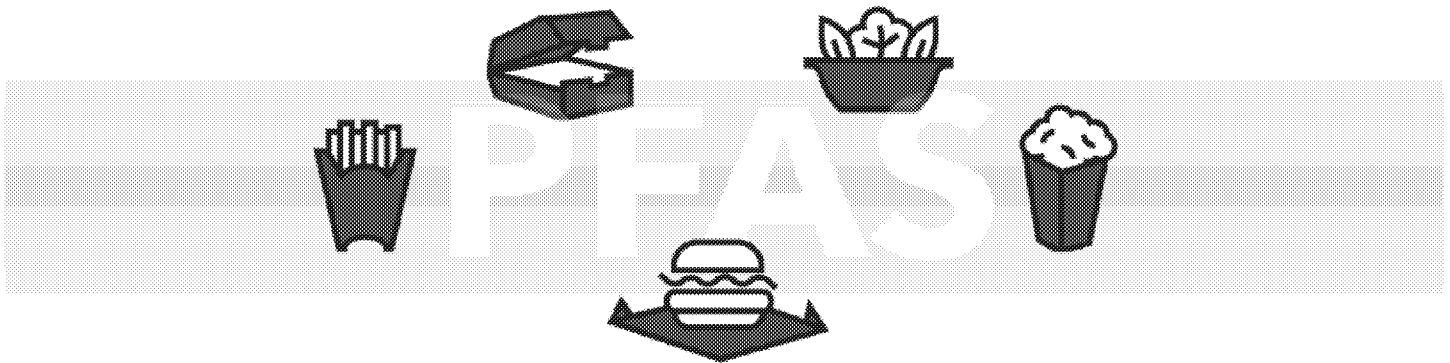


Illustration: Jonathan Hurtarte/Bloomberg Law

## Wendy's, States Ditch Food Wrappers With 'Forever Chemicals'

June 3, 2021, 5:01 AM

Listen

- States, corporations nixing food packaging with PFAS
- Liability lawsuits about compostability emerging

Fast-food restaurants and grocery store chains are joining a growing number of states in pushing "forever chemicals" out of food packaging, despite a federal thumbs-up that allows PFAS to touch what people eat.

Burger wrappings, salad bowls, pet food bags, and other packaging use some of the chemicals in the PFAS family to repel oil and grease. Companies also use per- and polyfluoroalkyl substances to protect food-processing equipment from heat and other stressors.

But some PFAS don't break down in the environment, and their links to health problems ranging from high cholesterol to cancer have triggered alarms across the U.S. and abroad.

Denmark, Maine, New York, Washington, and Vermont already banned PFAS from food packaging, while Minnesota, New York, and Connecticut have purchasing policies barring packaging with the chemicals. California, Minnesota, and Maryland are considering phase-out laws and/or developing regulations.

McDonald's Corp., Wendy's Co., and Whole Foods Market, Inc., are among at least 15 companies that have announced policies in recent years to phase PFAS out of packaging they use or sell.

The more states and corporations ban PFAS from food packaging, the more that practice will become the industry standard and expectation, said Emily M. Lamond, an attorney with Cole Schotz P.C.'s environmental department.

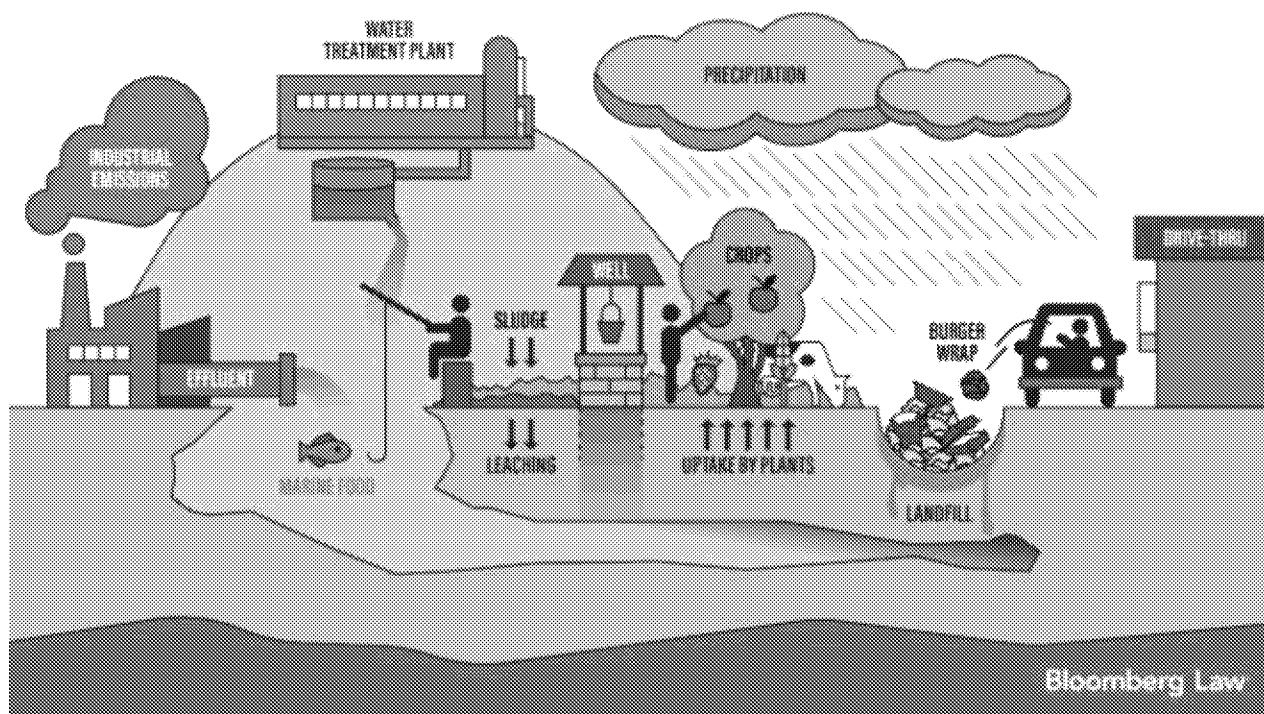
It's "death by a thousand cuts," she said. "Each action creates public attention, creates that much more pressure and attention."

## Adding Pressure

Eight nonprofits added more pressure on Thursday. They petitioned the Food and Drug Administration to ban all PFAS, which accumulate in the body, from packaging and other materials that touch food.

Rep. Debbie Dingell (D-Mich.) also plans to reintroduce legislation requiring the FDA to ban any use of PFAS in food packaging.

## How PFAS Gets in Food



"Congress never intended persistent, toxic chemicals to be allowed in food or packaging," she told Bloomberg Law in an email.

Meanwhile, an emerging area of consumer lawsuits over PFAS in packaging are adding more incentive for businesses to look for alternatives, which state and international agencies are identifying. Wax, silicone, denser paper, and clay-based coatings are among the possible PFAS substitutes for some products, these agencies have said.

All these actions and a basic argument are aiding change, said Mike Schade, who directs the Mind the Store campaign, which has pushed companies for years to phase out hazardous chemicals including PFAS from food packaging.

“Food packaging is used once,” he said. “You go to Burger King, buy a Whopper and fries, and throw away the packaging after scarfing them down. Yet the chemicals can last forever in the environment.”

## Corporate Policies Growing

Chipotle Mexican Grill, Inc.; Office Depot, LLC; and Koninklijke Ahold Delhaize NV, which owns grocery stores and food delivery services like Food Lion, the Giant Co., and Fresh Direct, are among more than a dozen companies with some type of PFAS in food packaging exclusion policy confirmed by Bloomberg Law.

Chipotle has eliminated PFAS from bowls used in the U.S. and Canada, with bowls in Europe to be targeted this quarter, according to a recent statement.

“Production is underway to phase out PFAS from other packaging items by the end of this year,” it said.

Wendy’s in April announced its goal of removing PFAS from to-go bags, sandwich wraps, fry cartons, and other “consumer-facing” packaging in the U.S. and Canada by the end of the year. And McDonald’s, which excluded some PFAS from food packaging in 2008, is working to remove all added fluorinated compounds from packaging used globally by 2025.

More corporations need to step up, said José Bravo, coordinator for the Campaign for Healthier Solutions. The group wants dollar-type store chains, which often serve as a de facto grocery store in low income neighborhoods and communities of color, to restrict PFAS and other chemicals from the products they sell.

But voluntary action isn’t enough, said Tom Neltner, chemicals policy director for the Environmental Defense Fund, which spearheaded Thursday’s regulatory petition. He pointed to the findings of a PFAS-sampling report released last month by a coalition of EU environmental groups.

In Denmark, which banned PFAS in paper and board food packaging in July 2020, none of McDonald’s french fry bags tested contained PFAS. But the french fry bags that McDonald’s sold in the Czech Republic and the United Kingdom did, according to the report.

Governments’ “rules matter,” and the FDA hasn’t done enough, Neltner said.

## FDA Actions

The FDA has restricted some PFAS over the past decade. It secured voluntary agreements from the BASF Corp., E. I. DuPont de Nemours & Co., and Clariant Corp. in 2011 to phase out older “long-chain” PFAS that are no longer made or used.

Anchroma Management GmbH, AGC Chemicals Americas Inc., and Daikin America, Inc. all volunteered to phase out some newer, “short-chain” PFAS by the end of 2023 after FDA wrote to them with concerns in 2019.

Efforts to speed the phase out “will disrupt a safe, proven, and science-based process of moving to alternative solutions and may lead to less-studied replacements and a greater risk for the public,” Daikin said in a statement.

The FDA declined to say whether or how many PFAS will remain on the market after these newer chemicals are no longer used.

There is no set definition of PFAS; the term includes a diverse range of chemical compounds, FDA said. A small subset was recently identified as concerning and is being removed from food contact materials, the agency said in a statement.

"All food contact substances are subject to FDA pre-market review and must meet strict data requirements to demonstrate that their use is safe," it said.

## FDA Actions Sought

The petitioners sought four more FDA actions. The first three build on the concerns FDA has had about the PFAS it's already worked to get off the market. Specifically the groups asked the agency to:

- revoke all food-contact authorizations for PFAS that it's granted companies,
- determine if other chemicals allowed to touch food based on companies' certification of their safety rather than the agency's review have the same characteristics, and
- ban PFAS whether in packaging or food handling equipment.

Finally, the agency should require industry submit data proving "per- and polyfluorinated compounds," or PFCs, are safe, the petitioners said. They used the term PFCs because it includes more fluorinated chemicals than does the agency's definition of PFAS, said Neltner.

The petition follows EDF's years of studying PFAS-toxicity studies found on the manufacturers' websites, studies submitted to the FDA, and letters FDA scientists sent PFAS producers raising significant concerns about potential harmful effects of the chemicals.

The agency has 180 days to respond to the petition.

## Going to Court

Meanwhile, consumers are bringing their concerns to federal court.

Three consumer lawsuits filed in the U.S. District Court for the Northern District of California alleged several companies violated California's consumer laws by fraudulently claiming food packaging with PFAS was compostable.

Had the customers known PFAS was in the packaging, they wouldn't have purchased it, because the chemicals don't break down, the plaintiffs alleged.

Two of the cases, *Ambrose v. The Kroger Co.*, and *DigiJacinto v. Albertsons Companies, Inc.*, are pending. A third case, *Nguyen v. Amazon.com Inc.*, was dismissed after the plaintiff's attorney couldn't reach him for months.

The cases exemplify the trend to use more and more types of liability claims to target more companies in the supply chain, said Ally Cunningham, a partner in Lathrop GPM's environmental and tort practice group.

"Win or lose, I think these cases will likely inform retailers of their decisions on carrying and advertising about PFAS-containing products," Cunningham said.

Although though the case against Amazon was dropped, the company stopped selling single-use food service items made with PFAS, she said. "Even in the absence of regulation, the litigation is having an impact on the industry."

The American Chemistry Council, which represents chemical manufacturers, objects "to actions taken that are not consistent with the available science," spokesman Tom Flanagan said.

ACC is working with state and federal policymakers, including the FDA, to encourage "strong, science-based regulations," he said.

The timing and specific policies that will drive the use of PFAS in food packaging aren't clear, Lathrop GPM's Cunningham noted. But, the trend to eliminate them is growing, and companies aim to please their customers, she said.

"Consumers probably would be pretty happy to know PFAS is being phased out of their food packaging," she said.

*For updates on state-level PFAS regulations and legislation, check out Bloomberg Law's PFAS State Activity Tracker [here](#).*

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To contact the editor responsible for this story: Rebecca Baker at [rbaker@bloombergindustry.com](mailto:rbaker@bloombergindustry.com)

June 3, 2021, 5:01 AM

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But some PFAS don't break down in the environment, and their links to health problems ranging from high cholesterol to cancer have triggered alarms across the U.S. and abroad.

[Denmark](#), [Maine](#), [New York](#), [Washington](#), and [Vermont](#) already banned PFAS from food packaging, while [Minnesota](#), [New York](#), and [Connecticut](#) have purchasing policies barring packaging with the chemicals. [California](#), [Minnesota](#), and [Maryland](#) are considering phase-out laws and/or developing regulations.

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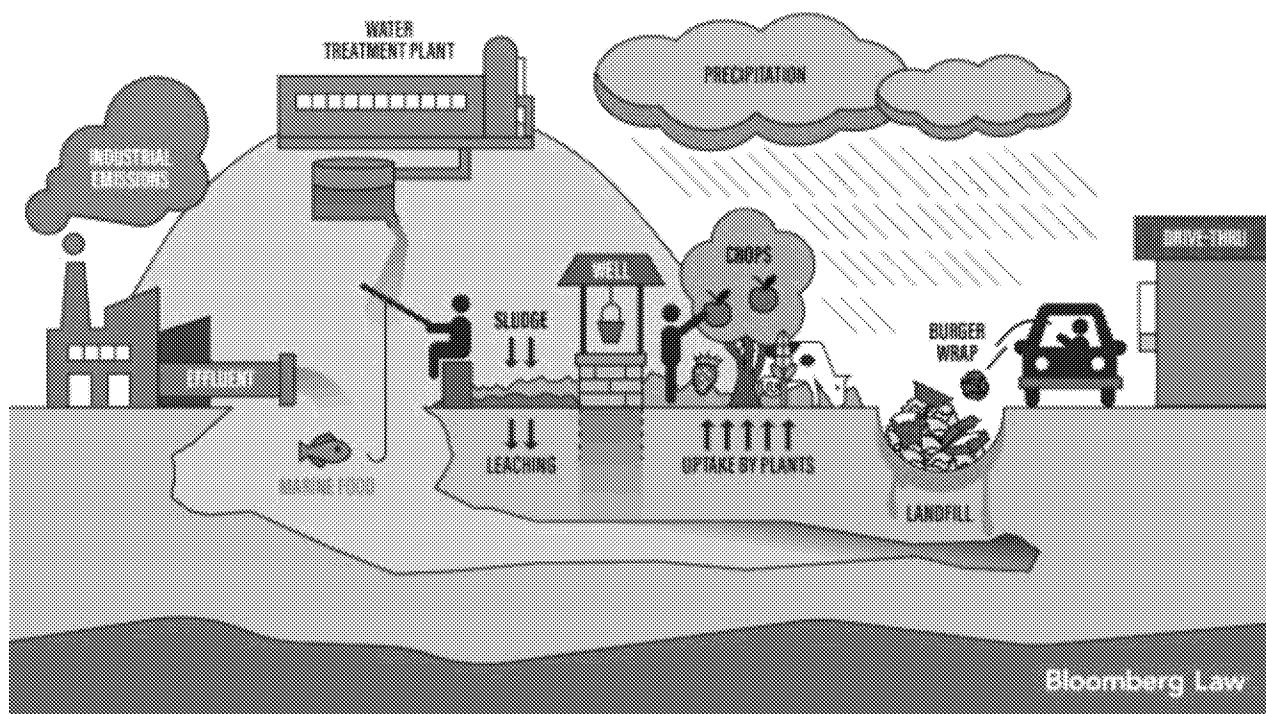
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**From:** Bloomberg Law <[bloomberg@bna.com](mailto:bloomberg@bna.com)>

**Sent:** Thursday, June 3, 2021 6:15 AM

**To:** Weiler, Gregory <[weiler.gregory@epa.gov](mailto:weiler.gregory@epa.gov)>

**Subject:** Environment & Energy Report Newsletter

# Environment & Energy Report

Thursday, June 3, 2021

Inside: [Leading the News](#) [Insights](#) [Companies & Law Firms](#)

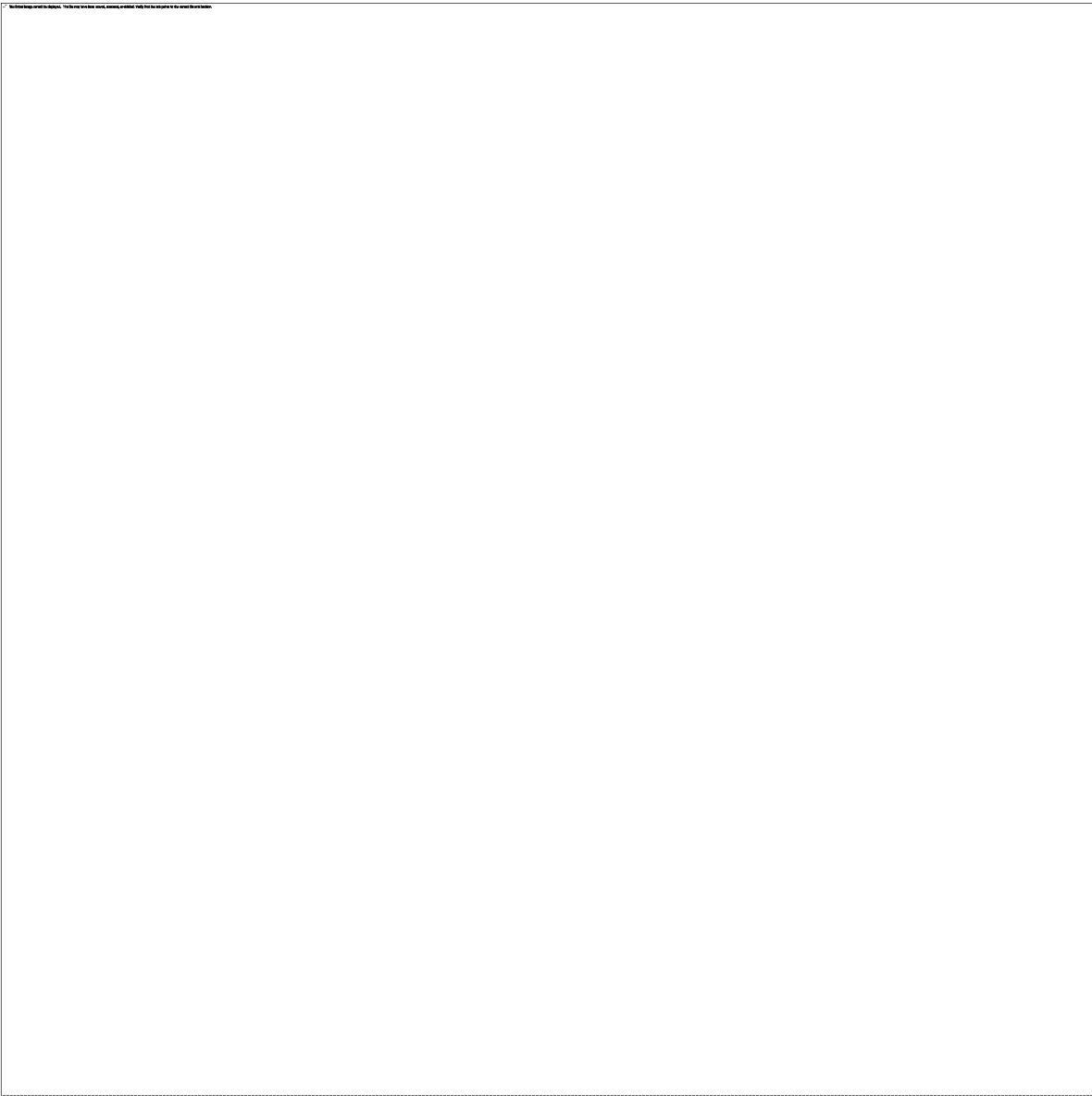
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## Wendy's, States Leaving Wrappers With 'Forever Chemicals' Behind

Despite a federal thumbs-up that allows PFAS or "forever chemicals" to touch what people eat, fast-food restaurants and grocery store chains are joining a growing number of states in pushing the chemicals out of food packaging.

**Looking Elsewhere:** McDonald's Corp., Wendy's Co., and Whole Foods Market, Inc., are among at least 15 companies that have announced policies in recent years to phase PFAS out of packaging they use or sell. Emerging consumer lawsuits over PFAS in packaging are adding more incentive for businesses to look for alternatives. Some in Congress also want to mandate that PFAS-based food packaging should be banned altogether.

**Multiple Uses:** Burger wrappings, salad bowls, pet food bags, and other packaging use some of the chemicals in the PFAS family to repel oil and grease. Companies also use per- and polyfluoroalkyl substances to protect food-processing equipment from heat and other stressors. But some PFAS' inability to break down in the environment, and their links to health problems ranging from high cholesterol to cancer, have triggered alarms across the U.S. and abroad.



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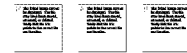


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## Local Governments Can Use their Power to Combat Climate Change

Cities are nimbler than Congress and more capable of implementing climate policy through local laws and policy initiatives, says Jillian Blanchard, director of the climate change program at Lawyers for Good Government. In a Bloomberg Law Insight, she lays out some of the tools local governments can use to shift to renewable energy and the legal considerations.

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## Leading the News

### Schumer's Infrastructure Path May Get Trickier After Ruling (2)

A new ruling by the Senate parliamentarian could complicate the Democrats' ability to use a fast-track budget process to enact President Joe Biden's \$4 trillion economic agenda without Republican support.

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### Block on Bear, Cougar Control Funds Appealed by Wildlife Agency

The U.S. Fish and Wildlife Service will challenge a judge's finding that its approval of funding for predator control studies in Colorado needs additional review, according to a notice of appeal filed in a federal court in the state.

[Documents Attached](#)

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### California Officials Urge EPA to Restore Auto Emissions Waiver

Top California officials urged the Biden administration to swiftly restore the state's power to mandate emission-free vehicles and enforce stringent limits on greenhouse gases from vehicle tailpipes.

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### Washington State Water Quality Lawsuit Advances Against EPA

The Environmental Protection Agency's refusal to determine whether Washington state needs updated water quality standards is subject to judicial review and an environmental group's lawsuit may proceed, a federal court in the state ruled.

[Documents Attached](#)

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### EV Tax Breaks Can Save Carmakers, Mich. Lawmaker Says (Podcast)

On this episode of Parts Per Billion, Rep. Dan Kildee (D-Mich.) discusses his push to reinstate tax credits for electric vehicles and why he thinks they're needed now more than ever.

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## **Meet the Professor Big Law Hires to Collect Nine-Figure Fees**

Brian Fitzpatrick is a go-to expert for lawyer fee requests. His expertise is based on a decade-old study of class-action fees he says is still the most comprehensive ever published.

[Documents Attached](#)

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## **New Lawyers Share Tips for Acing It as a Summer Associate**

Law firms have endured pandemic-related disruptions for over a year, and their summer associate programs are no exception. Law students normally benefit from face-to-face meetings with partners and associates, in-person training, and networking events. But in 2020, and again this summer, many programs are virtual. We asked incoming and new associates to share their tips on how to thrive in our two-part series, "Acing It as a Summer Associate."

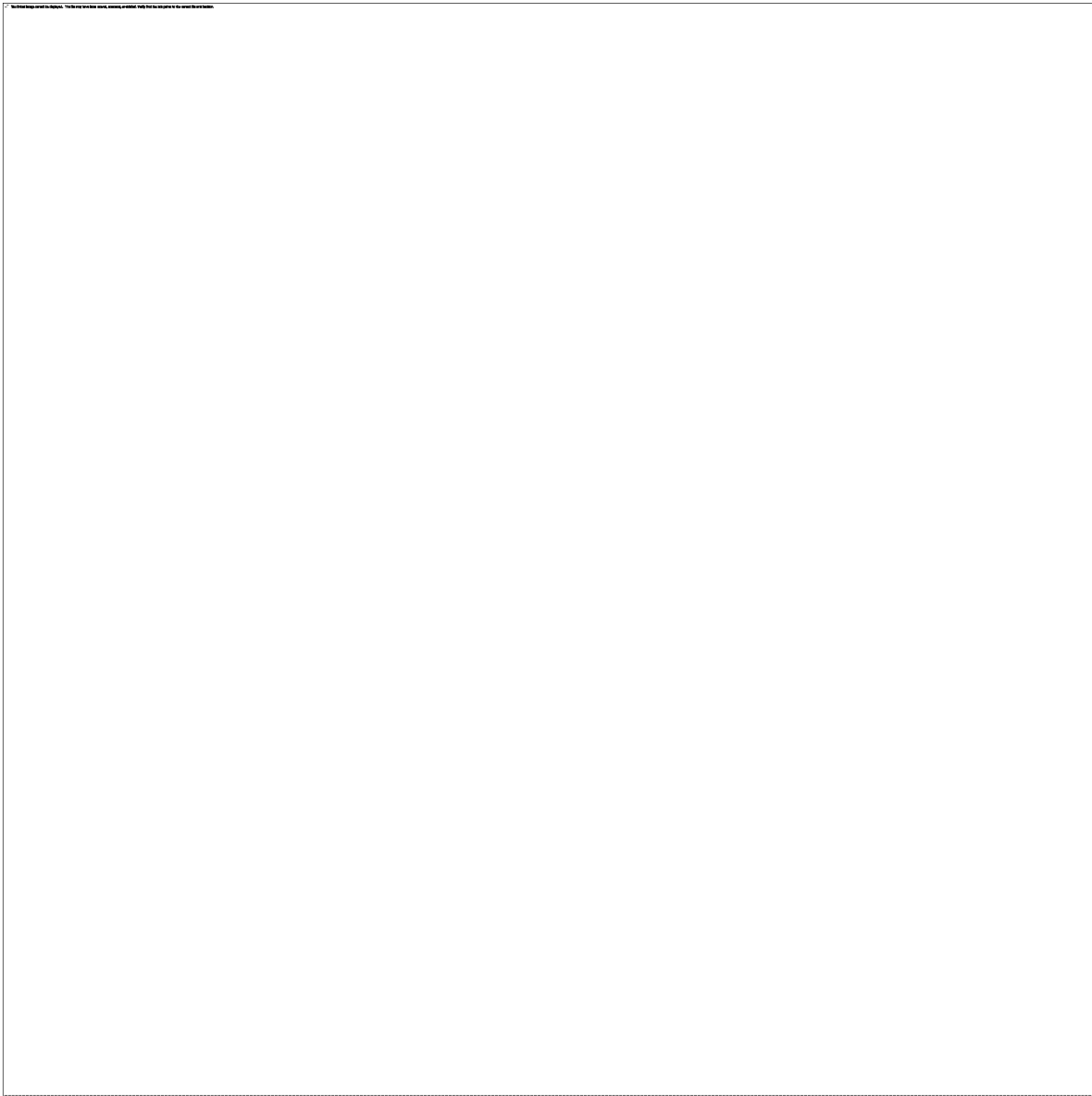


Image: Jonathan Hurtarte/Bloomberg Industry Group

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## Insights

Perspectives from Legal Practitioners, Law Professors and Other Thought Leaders

### **Acing It as a Summer Associate: Best Best & Krieger's Marco Ornelas**

By Marco Ornelas of Best Best & Krieger LLP

In our “Acing It as a Summer Associate” series, Best, Best & Krieger's Marco Ornelas—slated to join the firm as a municipal law associate—says he enjoyed a more typical internship at the Riverside, Calif., office in 2019 with trips to a brewery, horse races, and baseball games. His 2020 summer program was remote, but he met more

attorneys and had meaningful conversations with some of them about racial justice issues.

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## **Acing It as a Summer Associate: Mintz's Keshav Ahuja**

By Keshav Ahuja of Mintz

In our "Acing It as a Summer Associate" series, Mintz associate Keshav Ahuja says he was fortunate to be an in-office summer associate in 2019 and took part in fun extracurricular events. He says two goals should remain the same even for remote summer associates: Learn about different areas of law that interest you and try to form relationships and lasting friendships at the law firm.

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## **Acing It as a Summer Associate: Blank Rome LLP's Serena S. Gopal**

By Serena Gopal of Blank Rome LLP

Blank Rome's Serena S. Gopal admits she had no idea what a senior partner was talking about in her first meeting as a summer associate and that she quickly Googled the phrases he used. In our "Acing It as a Summer Associate" series, she says as she learned more, she took on more duties her second summer as an associate and recommends taking initiative, communicating well, and paying attention to detail.

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## **Acing It as a Summer Associate: Greenberg Traurig's Sobeida Peralta**

By Sobeida Peralta of Greenberg Traurig LLP

In our "Acing It as a Summer Associate" series, Greenberg Traurig's Sobeida Peralta says success as a summer associate requires more than a strong work ethic. Her advice? Realize you belong, be curious about your work, and make as many connections as possible—these are the people that will get you through the difficult times.

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## **Acing It as a Summer Associate: Foley & Lardner's Whitney Swart**

By Whitney Swart of Foley & Lardner LLP

In our “Acing It as a Summer Associate” series, Foley & Lardner LLP’s Whitney Swart says insecurity is normal and advises summer associate to remember they are at the firm to be taught. She says it’s helpful to “be a person” at social functions and she used her “fun fact” that she is a certified birthday clown to break the ice.

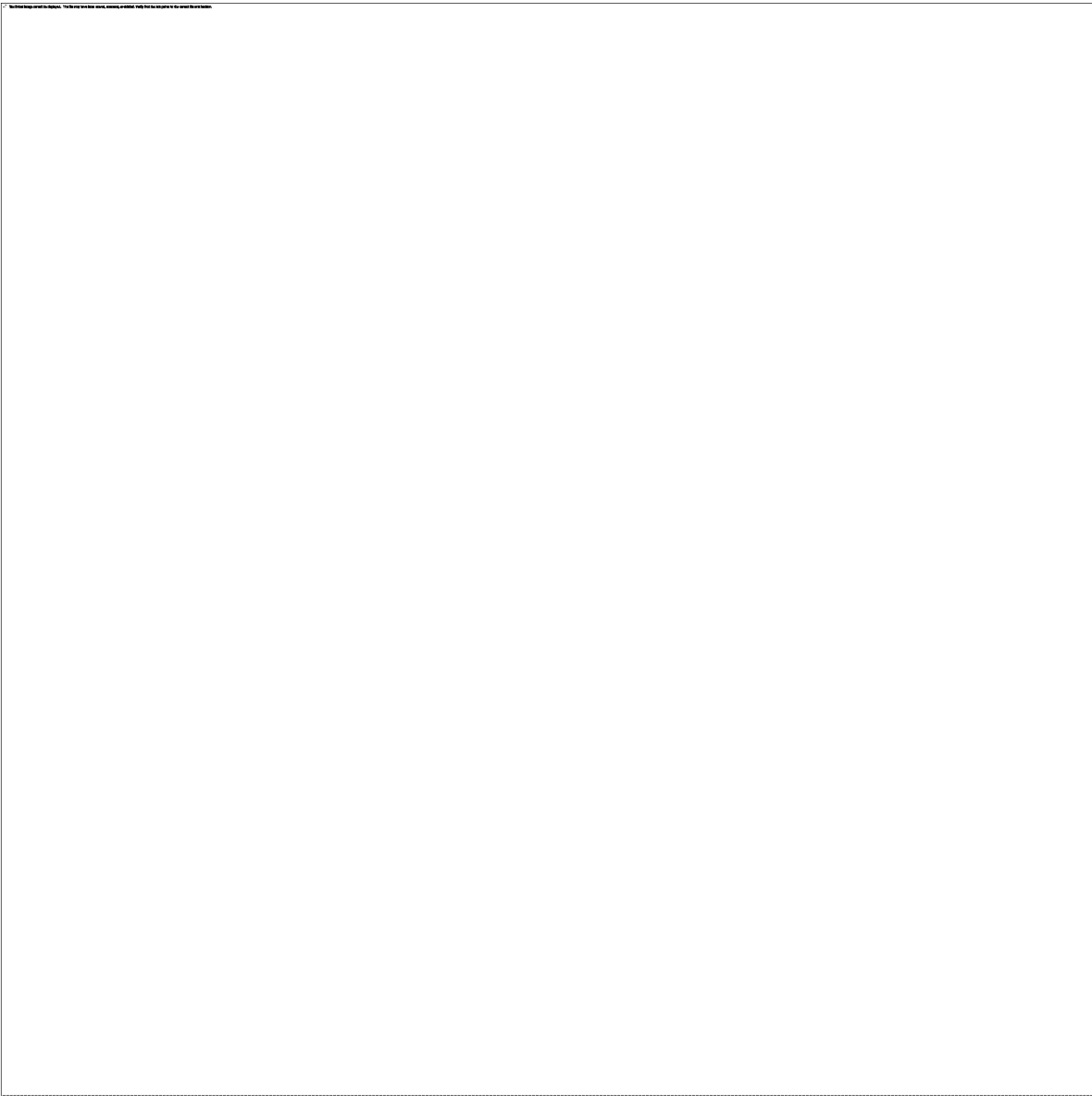
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## **Chart: Big Oil’s Green-Spending Boost Isn’t Enough**

The oil and gas industry is set to boost investments in clean energy this year, but that still won’t be enough to put the world on a path to limit a dangerous rise in global temperatures. That’s the view of the International Energy Agency, which expects traditional fossil-fuel companies to increase climate-friendly investments to at least 4% of their capital spending, up from just 1% last year.





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## Climate

### Connecticut Climate ‘Deception’ Case Punted Back to State Court

A federal judge tossed another climate liability case back to state court less than two weeks after the case was argued in district court last month.

[Documents Attached](#)

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### EU Targets \$1 Billion for Clean Technology in Pact with Gates

The European Commission and Bill Gates joined forces in an initiative that wants to mobilize as much as \$1 billion investment in clean technologies such as green hydrogen and sustainable fuels.

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### **EU Eyes First-of-a-Kind Border Levy in Climate Fight (1)**

The European Union is planning to slap an import levy on steel, cement and aluminum produced in countries with lower environmental standards, as it seeks to become a world leader on climate without harming domestic producers.

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### **EU Recovery Plans Have Lawmakers Worried About Greenwashing**

The Greens in the European Parliament warned that some member states' recovery plans may lead to so-called greenwashing and could fail to meet the region's climate-related spending goals as it embarks on an unprecedented energy transition.

[READ MORE](#)

### **Carney, StanChart's Winters Hit Impasse With Carbon-Offset Plan**

Global warming is the world's biggest market failure, so the solution might just be better trading. On one side of the trade would be the companies clogging the atmosphere with heat-trapping gases; on the other countless projects to eliminate the problem by planting trees or building machines that capture carbon dioxide. Create a market that turns a ton of removed carbon into a commodity just like corn or copper, and money will flow from the emitters to the fixers.

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### **Maersk Seeks \$150-a-Ton Carbon Tax on Shipping Fuel (2)**

The world's largest container shipping line has called for a \$150-a-ton carbon tax on shipping fuel that would drive up the costs for an industry that delivers 80% of world trade.

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## Energy & Natural Resources

### Liability Shield for Controlled Burns Advances in California

A bipartisan group of California senators unanimously passed a bill Wednesday that would shield burn bosses, landowners, and others from liability if a prescribed burn they ignite to reduce wildfire risk gets out of control.

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### Illinois Lawmakers Need Special Session for Exelon, Energy Bill

The Illinois Legislature will meet in a special session to rewrite state energy policy after it failed to complete the work during the regular session, legislators said.

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### Exxon Activist Expands Boardroom Presence With Third Seat (2)

Exxon Mobil Corp. activist investor Engine No. 1 expanded its presence on the oil giant's board to three seats, according to preliminary vote tallies, cementing a victory that has reverberated across the energy industry.

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### Permian Study Finds Overproduction Leading to More Methane Leaks (1)

The energy-rich region of the southwestern U.S. known to geologists and fossil fuel enthusiasts as the Permian Basin has expanded its production more quickly than any other oil and gas region in recent years, reaching 38% of U.S. oil and 17% of gas production in 2020. With this scale has come a gush of greenhouse gas emissions, although just how much has until recently been impossible to say.

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### Orsted Seeks Green Supermajor Role With \$57 Billion Plan (1)

Orsted A/S plans to spend 350 billion Danish kroner (\$57 billion) by 2027 to be the world's leading green energy provider.

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## Energy Transfer's Sunoco, Magellan Midstream Settle Patent Suit

Sunoco Partners Marketing & Terminals, a unit of Energy Transfer Partners, had alleged that a blending system installed along an interstate pipeline by Magellan Midstream Partners and Powder Springs Logistics, infringes patents for injecting butane into gasoline.

[EDocket Attached](#)

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## Hazardous Waste

### Intercontinental Terminals Sued for Oil Spill Cleanup Costs

Stolthaven Houston Inc. alleges Intercontinental Terminals Co. LLC must pay about \$260,000 to address the costs of responding to a Texas oil storage facility fire, according to a complaint filed Wednesday in federal district court.

[EDocuments Attached](#)

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## Companies

### Mentioned in this issue

Alphabet Inc  
Amazon.com Inc  
Ameren Corp  
Andeavor  
BP PLC  
Brookfield Asset Management Inc  
Chemours Co/The  
Chipotle Mexican Grill Inc  
Enel SpA  
Equifax Inc  
Exelon Corp  
Exxon Mobil Corp  
Iberdrola SA

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## Law Firms

### Mentioned in this issue

Best Best & Krieger  
Blank Rome  
Boies Schiller Flexner  
Cole Schotz  
Foley & Lardner  
Greater Boston Legal Services  
Greenberg Traurig  
Keller and Heckman  
Lathrop GPM  
Liskow & Lewis  
Mintz PC  
Perkins Coie  
Quinn Emanuel

Koninklijke Ahold Delhaize NV

Kroger Co/The

Microsoft Corp

Morgan Stanley

Orsted A/S

Royal Dutch Shell PLC

Standard Chartered PLC

TJX Cos Inc/The

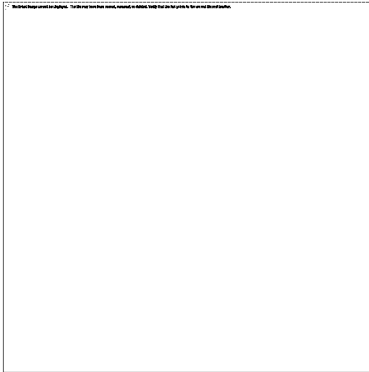
Wendy's Co/The

Whole Foods Market Inc

Yum! Brands Inc

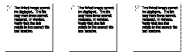
Sidley Austin

Winston & Strawn



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